REMARKS/ARGUMENTS

The election/restriction requirement dated January 16, 2009 has been considered. Applicants thank the Examiner for providing some clarification relative to the prior restriction requirement of 10/2/2008. In particular, the Examiner clarified for Applicants that *one* of species (A), (B), and (C) (referred to in the restriction requirement as "subspecies") relating to the muscle tone sensors depicted e.g. in FIGS. 9A-D must be elected, and *one* of species (A) and (B) (also referred to as "subspecies") relating to a "third sensor" must be elected.

With regard to the muscle tone sensor species, Applicants elect *without traverse* species (B), in which the muscle tone sensor is mechanically coupled to the header of an implantable device. Claims that encompass this elected species are claims 86-107, 109, and 111-123, and at least claims 86-107 and 111-123 are generic.

With regard to the other species, referred to as "species 2", Applicants again point out that the wording used in the description of these species is unclear and confusing. The description appears to be based on the language of pending claims 118 and 120, which recite:

118: "... wherein the detector system further includes a third sensor configured to detect a cardiac signal, and wherein the therapy system is configured to provide bradycardia pacing therapy responsive to the detected cardiac signal and to the sleep state classification" (emphasis added); and

120: "... wherein the detector system further includes a third sensor configured to detect a cardiac signal, and wherein the therapy system is configured to provide preventative arrhythmia therapy responsive to the detected cardiac signal and to the sleep state classification" (emphasis added).

In these claims, the third sensor is "configured to detect" a cardiac signal, and the therapy system is "configured to provide" the recited therapy. The description of the "species 2", however, omits mention of any therapy system, and states instead that the third sensor both "detect[s] a cardiac signal" and "is configured to provide [the bradycardia pacing or preventative arrhythmia] therapy". Unlike this description, none of the pending claims recite a ***sensor*** that is "configured to provide" ***therapy***. Applicants traverse this election of species at least because of the discrepancy between the description of the "species 2" and the language used in the pending claims. Applicants presume the Examiner intended to describe the "species 2" in a manner more in keeping with the claims, such as: a system or method in

which a third sensor is configured to detect a cardiac signal, and a therapy system is configured to provide bradycardia pacing therapy or preventative arrhythmia therapy. Applicants respectfully request the Examiner to confirm this presumption. Under the presumption, Applicants elect species (A), i.e., a system or method in which a third sensor is configured to detect a cardiac signal and a therapy system is configured to provide bradycardia pacing therapy. Claims that encompass this elected species are claims 86-89, 91-99, 101-119, and 121-123, of which at least claims 86-89, 91-98, 101-117, and 121-123 are generic.

CONCLUSION

Applicants respectfully request reconsideration of the requirement for restriction as set forth above. If the Examiner would find it helpful to discuss any issue related to this application by telephone, the Examiner is invited to contact the undersigned attorney.

Respectfully submitted,

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